THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.27026 OF 2005

DATED:20.12.2005

Between:

Ambati Tirupathamma and another

…Petitioners

And

Mandal Revenue Officer, Vijayawada and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.27026 OF 2005

ORDER:

The petitioners filed the instant Writ Petition seeking a Writ of Mandamus directing the respondents 1 to 4 herein to conduct survey and locate the site mentioned in Document No.953/63 of S.R.O., Vijayawada to the extent of 500 Sq.yards and the site in respect of which one Rapakula Sobanadhri executed Will dt.5.10.1959 authorizing the seventh respondent to manage the property admeasuring 200 Sq.yards in Yaramvari Stree, Machavaram, Vijayawada.

The background of the case leading to filing of the present Writ Petition is as follows. The petitioners claimed that their ancestors have been in possession of the undisclosed extent of land in N.T.S.No.80, Ward No.16, Block No.23 of Vijayawada,

for several decades. In 1995, the seventh respondent filed a suit being O.S.No.715 of 1995 on the file of the Court of III Junior Civil Judge, Vijayawada for injunction. The suit was dismissed in 1999. The seventh respondent filed O.S.No.84 of 2000 on the file of the Court of II Additional District Judge, Vijayawada, for declaration of title and injunction and he also filed first appeal, being A.S.No.55 of 2002 against O.S.No.715 of 1995 on the file of the Court of First Additional Senior Civil Judge, Vijayawada. The daughter of the first petitioner alleging that the seventh respondent interfered with the property in her possession, filed O.S.No.34 of 2002 on the file of the Court of III Junior Civil Judge, Vijayawada. With the consent of the parties, the appeal filed by the seventh respondent being A.S.No.55 of 2002 and the suit filed by the daughter of the first petitioner being O.S.No.34 of 2002 were transferred to the Court of II Additional District Judge, which clubbed the three matters and delivered a common judgment on 23.11.2004 in the two suits and one appeal. The suit filed by seventh respondent for declaration being O.S.No.84 of 2000 and the appeal filed by him being A.S.No.55 of 2002 were allowed, and O.S.No.34 of 2002 filed by daughter of first petitioner went against him.

The seventh respondent filed E.P.No.67 of 2005 in O.S.No.84 of 2000. In the said E.P. he prayed the Executing Court to commit the judgment debtors to civil prison and also attach movable properties for violating the permanent injunction granted by decree under Order 21 Rule 32 of Code of Civil Procedure, 1908. At that stage, the seventh respondent also gave a complaint to Sub-Inspector of Police, Machavaram P.S., fifth respondent herein. The case was then referred to pre-litigation forum and in the meeting convened in June, 2005, the Mandal Revenue Officer, Vijayawada, first respondent herein, suggested survey of the matter. The petitioners alleged that in spite the same no survey is conducted. They, therefore, seek a direction to respondents 1 to 4 to conduct survey and locate the site of the petitioners. They also filed W.P.M.P.No.34731 of 2005 seeking stay of all further proceedings in E.P.No.67 of 2005.

The learned counsel for the petitioners made elaborate submissions which essentially center round the *inter se* rights of petitioners on one hand and seventh respondent on the other hand. He also submits that if the respondents complete the survey and demarcated the land which is the subject matter of document No.953/63 and registered Will dt.5.10.1959 executed in favour of seventh respondent, many disputes in the pending litigation would be solved and therefore a direction may be issued to respondents 1 to 4.

Insofar as the first aspect of the matter is concerned, having regard to the common judgment of the Court of II Additional District Judge, Vijayawada, dt.23.11.2004, in A.S.No.55 of 2000, O.S.No.84 of 2000 and O.S.No.34 of 2002, the matter stands concluded and the petitioners cannot be allowed to agitate the same. Insofar as the second aspect of the matter is concerned, the land which the petitioners claim and the land which the petitioners dispute as not belonging to seventh respondent, form part of plaint schedule in O.S.No.84 of 2000. The plaint plan is annexed to the Writ Petition. Therefore, nothing prevents the petitioners to move the executing court for demarcating boundaries of plaint schedule land in O.S.No.84 of 2000 for the purpose of identifying or demarcating the property which is subject matter in a suit

which is already decided and Writ Petition is not a proper remedy. Even if the Mandal Revenue Officer has suggested a survey of the land, petitioners have to seek a direction from the Civil Court and this Writ Petition is wholly misconceived. This Court is of considered opinion that the petitioners have filed this Writ Petition only to avoid any order by the executing court, which is ceased off the execution petition under Order 21 Rule 32 of CPC. Indeed, there is something, which does not meet the eye in the case.

The Writ Petition, for the above reasons, is accordingly dismissed.

_____

(V.V.S.RAO, J)

20.12.2005

bnr